

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

**SOUTHERN SURGERY CENTER, LLC,
SOUTHERN BONE & JOINT SPECIALISTS, P.A.
AND SOUTHERN DEVELOPMENT RESOURCES, LLC**

PLAINTIFFS

VS.

CIVIL ACTION NO. 2:07-cv-00181-KS-MTP

**FIDELITY AND GUARANTY INSURANCE COMPANY;
UNITED STATES FIDELITY AND GUARANTY COMPANY
AND ST. PAUL TRAVELERS COMPANIES, INC.**

DEFENDANTS

ORDER

This matter is before the Court on Plaintiffs' Motion to Limit Number of Depositions [77] and Defendants' Cross Motion to Amend Case Management Order to Allow Additional Depositions [78]. In light of the approaching discovery deadline, the Court ordered the parties to file their responses to the motions by the close of business on June 26, 2008. Having considered the submissions of the parties and the applicable law, the Court finds as follows:

In their Motion [77], Plaintiffs urge the Court to limit the number of depositions to be taken by Defendants to seven (7) fact witnesses, as set forth in the Case Management Order [8]. Conversely, Defendants ask the Court to amend the Case Management Order [8] to allow them to take additional depositions, for a total of twenty-one (21) fact witnesses. Defendants claim that Local Rule 26.1(D)(2) limits *each Defendant* to a total of five (5) fact witness depositions, for a total of fifteen (15). Accordingly, Defendants claim they are only seeking an additional two (2) depositions per Defendant. Plaintiff argues that this limitation applies to each side, and not each party.

Local Rule 26.1(D)(2) provides that in a standard track case, such as this one, "Depositions should be limited to the parties and no more than five fact witness depositions per

party without prior approval of the court.” The Case Management Order [8] limits fact witness depositions to seven (7), but is not clear as to how the limit is applied.

This Court is vested with broad discretion in establishing the scope of discovery. *See Conboy v. Edward D. Jones & Co.*, 140 Fed. Appx. 510, 516 (5th Cir. 2005). Based on the number of potential witnesses disclosed by the parties, the Court agrees that the Case Management Order should be amended to allow additional fact witness depositions within the discovery deadline. However, the Court does not agree that it is necessary for Defendants to take twenty-one (21) fact witness depositions. Defendants’ request for additional depositions or for clarification comes two weeks before the discovery deadline. Further, Defendants’ interests are aligned and are not adverse to one another, indeed they are represented by the same attorney. Accordingly,

IT IS, THEREFORE, ORDERED:

1. Plaintiffs’ Motion to Limit Number of Depositions [77] is DENIED; and
2. Defendants’ Cross Motion to Amend Case Management Order to Allow Additional Depositions [78] is GRANTED in part and DENIED in part. Defendants are granted leave to take a **total of twelve (12)** fact witness depositions.

SO ORDERED this the 27th day of June, 2008.

s/ Michael T. Parker

United States Magistrate Judge